IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.2862 OF 2004
IN
APPEAL NO.562 OF 2004
IN
NOTICE OF MOTION NO.598 OF 2004
IN
T.I. & J. SUIT NO.4 OF 2004.

Indresh Shyamsunder Advani & Anr. .. Appellants.

V/s.

Gopi Tarachand Advani .. Respondent.

Mr.Harish Jagtiani, Senior counsel with Mr.Satish Shah i/b. A. D'Souza for the appellants.

Mr.D.D. Madon with Mr.Chetan Kapadia i/b. Nankani & Associates for the respondent.

CORAM : R.M. LODHA, &
J.P. DEVADHAR, JJ.

DATED : 5TH NOVEMBER, 2004.

P.C. :

Heard.

2. The appellants have taken out this notice of motion for diverse reliefs. However, during the course of hearing Mr.Harish Jagtiani, the learned senior counsel for the appellants confined the prayer to one relief i.e. grant of permission to the appellants to carry out repairs in the subject property being existing bunglow on the plot bearing

CS No.9/596 of Malabar Hill Division as per the sanctioned plan / permission granted by the Brihanmumbai Municipal Corporation (for short 'BMC').

3. On September 8, 2004 while admitting the appeal, we passed the following interim order :

> " Heard.
>
> 2. Until further order the operation of clause (3) of para 29 of the impugned order dated July 12 & 13, 2004 shall remain stayed. However, the following order shall remain operative ':
>
> i) The appellants are directed to maintain status-quo with regard to the subject property as described in Exhibit - 'W' annexed to the affidavit in support of the notice of motion No.598 of 2004.
>
> ii) The appellants are also restrained from alienating, transferring, disposing off or creating any third party right or interest in the subject property henceforth.
>
> iii) The aforesaid order shall not preclude the appellants in applying to the concerned authorities for repairs and restoration of the subject property subject to the orders that may be passed in the appeal.
>
> iv) If such permission is granted by the concerned authorities, liberty to the appellants to apply for suitable modification of the order of status-quo after giving notice to the respondents.

> 3. At the request of the learned senior counsel for the respondent, we observe that the court receiver appointed vide ad-interim order dated September 18, 2003 shall continue for a period of 10 weeks.
>
> 4. The notice of motion stands disposed of."

4. We are informed by the learned senior counsel for the appellants that thereafter the BMC has revalidated the approved plans / IOD issued on July 12, 2002 and the commencement certificate issued on August 29, 2002 for the period ending on September 28, 2005.

5. The right of the respondent in the subject property at best is to the extent of 1/4th share therein. On the other hand if the appellants' case is accepted, they are full owner of the subject property and if it is prima facie assumed that the respondent has 1/4th share in the subject property, then the appellants have 3/4th share in the property. The respondent is US citizen and has not visited the country for more than two decades. The property in question needs repairs is beyond doubt. The interest of justice, therefore, demands that the appellants should be permitted to carry out repairs and restore the property without additions and alterations.

Having considered all aspects, we are satisfied that the following order shall meet the ends of justice.

In partial modification of the order of status-quo dated September 8, 2004, the appellants are granted permission to carry out repairs/ restoration on the subject property as per sanctioned plan/permission granted by the BMC on the following conditions :

i) The appellants shall deposit a sum of Rs.1 crore with the Prothonotary & Senior Master of this Court within four weeks from today. The direction of deposit is being given to ensure that the appellants shall abide by the orders of the Court and carry out the repairs / restoration strictly in accord with the approved plans / permission granted by the BMC.

ii) The appellants shall file an undertaking before this Court that they shall only carry out repairs / restoration on the subject property as per sanctioned

plans and shall not make any additions and alterations in the subject property though for which the plans have been sanctioned by the BMC. The appellants shall also undertake that they shall not utilise FSI available for the existing old bunglow. The appellant shall further undertake that they are in possession of the subject property.

iii) The appellant shall carry out the repairs on the subject property as listed below :

a. Strengthening the existing old external periphery of the structure including plastering and painting.

b. Strengthening and providing suitable re-enforcement to the existing old internal walls of the structure including plastering and painting.

c. Restoring/providing roof on the structure and after demolishing the non-tallying areas earmarked by Municipal

Corporation, provide roof over the Addition/Alteration area.

d. Restoring/providing internal brick masonry/partition, staircase, toilets including plastering and painting.

e. Restoring the garden, compound wall, gate and parking place.

iv) Save and except the permission to carry out the repairs/restoration on the subject property as granted above, the appellant shall maintain status-quo in respect of the subject property. However, upon completion of the repair works / restoration strictly as indicated above, liberty to the appellants to apply for further order/s.

v) The work of repairs/restoration shall not be commenced by the appellants before expiry of four weeks from today.

We clarify that our order granting permission to the appellants to carry out repairs /

restoration on the subject property as per sanctioned plans / permission granted by the BMC is without prejudice to the respondent's right to challenge the plan sanctioned by the BMC.

6. Upon deposit of Rs.1 crore by the appellants, the Prothonotary & Senior Master is directed to invest the said amount in fixed deposit of any nationalised bank initially for a period of one year, renewable thereafter for the same period each time until disposal of the appeal.

(R.M. LODHA, J.)

(J.P. DEVADHAR, J.)